

AMENDED IN ASSEMBLY MAY 2, 2012  
AMENDED IN ASSEMBLY MARCH 29, 2012  
CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2649**

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**Introduced by Assembly Member Ammiano**

February 24, 2012

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An act to add Section 3.3 to ~~the Statutes of~~ Chapter 1333 of the Statutes of 1968, relating to local government.

LEGISLATIVE COUNSEL'S DIGEST

AB 2649, as amended, Ammiano. Tidelands and submerged lands: City and County of San Francisco: seawall lots.

Existing law grants to the City and County of San Francisco the right, title, and interest of the State of California in and to certain tidelands and submerged lands in trust for certain purposes. Under existing law, the Burton Act and the Burton Act transfer agreement, the interest of the state in and to the Harbor of San Francisco was transferred in trust to the City and County of San Francisco. The State Lands Commission has jurisdiction over tidelands and submerged lands of the state.

Existing law declares, until January 1, 2094, that certain parcels of real property denominated as the designated seawall lots are free from the use requirements of the public trust, the Burton Act trust, and the Burton Act transfer agreement. With respect to those lands, the San Francisco Port Commission is authorized to lease all or a portion of the designated seawall lots if specified conditions are met.

This bill would, similarly, declare that, *upon the State Lands Commission making specified findings*, seawall lot 322-1 is free from the use requirements of the public trust, the Burton Act trust, and the

Burton Act transfer agreement, and would authorize the port to lease seawall lot 322-1, subject to certain requirements and conditions. This bill would authorize the port to provide a rent credit or other waiver or deferral of rent in connection with either a nontrust lease of seawall lot 322-1, or, with the approval of the State Lands Commission, a lease of any other designated seawall lot or other port property that is not subject to *the use restrictions of the public trust* ~~or, the Burton Act trust-use restrictions, or the Burton Act transfer agreement~~, that results in an effective rent to the port for below fair market value, if the State Lands Commission finds that certain conditions are met.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1     SECTION 1. For the purposes of this act the following terms  
2     have the following meanings:  
3     (a) “Affordable housing” means housing for very low, low-, or  
4     moderate-income households as defined in paragraph (3) of  
5     subdivision (h) of Section 65589.5 of the Government Code.  
6     (b) “Burton Act” means Chapter 1333 of the Statutes of 1968,  
7     as amended.  
8     (c) “Burton Act transfer agreement” means that certain  
9     agreement dated January 24, 1969, between the state and the city,  
10    relating to the transfer of the Port of San Francisco from the state  
11    to the city, and any amendments to that agreement in accordance  
12    with its terms.  
13    (d) “Burton Act trust” means the statutory trust imposed by the  
14    Burton Act, by which the state conveyed to the city, in trust and  
15    subject to certain terms, conditions, and reservations, the state’s  
16    interest in certain tidelands, including filled lands, and lands  
17    dedicated or acquired by the city as assets of the trust.  
18    (e) “Chapter 660” means Chapter 660 of Statutes of 2007, as  
19    amended.  
20    ~~(e)~~  
21    (f) “City” means the City and County of San Francisco, a charter  
22    city and county, and includes the port.  
23    ~~(f)~~  
24    (g) “Commission” means the State Lands Commission.  
25    ~~(g)~~

1 (h) “Designated seawall lot” or “designated seawall lots” means  
2 any or all of the parcels of real property situated in the city and  
3 commonly known as seawall lots 328, 330, 337, 347S, and 322-1,  
4 including a portion of Mission Rock Street, as shown on that certain  
5 map entitled “revised map of designated seawall lots,” which is  
6 reproduced in Section 8 of this act and is on file with the  
7 commission and the port.

8 (i) “Historic pier” means any pier, marginal wharf, pier shed,  
9 bulkhead building, and any other building or structure in the San  
10 Francisco waterfront between and including Pier 48 and Pier 45  
11 that has been included in the Port of San Francisco Embarcadero  
12 Historic District and that is either individually listed or eligible  
13 for listing on the National Register of Historic Places or has been  
14 designated as, or meets the standards for, resources contributing  
15 to the historic significance of the Port of San Francisco  
16 Embarcadero Historic District under federal law.

17 (j) “Historic structure” means any building, structure, or other  
18 facility, including a historic pier, that is located on port property  
19 and either is individually listed or eligible for listing on the  
20 National Register of Historic Places, or has been designated as,  
21 or meets the standards for, a resource contributing to the historic  
22 significance of a national register listed historic district, the  
23 proposed Pier 70 Historic District, or a district eligible for listing  
24 as a historic district under federal law.

25 ~~(h)~~

26 (k) “Lease” means a ground lease or space lease of real property,  
27 license agreement for use of real property, temporary easement,  
28 right-of-way agreement, development agreement, or any other  
29 agreement granting to any person any right to use, occupy, or  
30 improve real property under the jurisdiction of the port.

31 ~~(i)~~

32 (l) “Nontrust lease” means a lease of all or any portion of the  
33 designated seawall lots free from the use requirements established  
34 by the public trust, the Burton Act trust, and the Burton Act transfer  
35 agreement.

36 ~~(j)~~

37 (m) “Person” means an individual, corporation, limited liability  
38 company, partnership, joint venture, business entity, business trust,  
39 association or other private organization or private entity, or any  
40 governmental entity or agency.

1     ~~(k)~~

2     (n) “Pier 70 area” means the Pier 70 area as defined in  
3 subdivision (s) of Section 1 of Chapter 477 of the Statutes of 2011.

4     ~~(t)~~

5     (o) “Port of San Francisco” or “port” means the city acting by  
6 and through the San Francisco Port Commission.

7     (p) “*Preservation*” means the rehabilitation, restoration, or  
8 preservation of historic piers or other historic structures in  
9 accordance with the Secretary of Interior’s Standards for the  
10 Treatment of Historic Properties. Preservation includes seismic  
11 retrofitting, substructure repair, and other structural and life-safety  
12 improvements, provided that the improvement is necessary for,  
13 and in furtherance of, the preservation of historic piers or other  
14 historic structures.

15     ~~(m)~~

16     (q) “Public trust” or “trust” means the common law public trust  
17 for commerce, navigation, and fisheries.

18     ~~(n)~~

19     (r) “Seawall lot 322-1” means that parcel of real property  
20 situated in the city commonly known as seawall lot 322-1, as shown  
21 on that certain map entitled “revised map of designated seawall  
22 lots,” which is reproduced in Section 8 and is on file with the  
23 commission and the port.

24     ~~(e) “Chapter 660” means Chapter 660 of the Statutes of 2007,~~  
25 ~~as amended.~~

26     ~~(p)~~

27     (s) “Tidelands” means the lands lying below the elevation of  
28 ordinary high water, whether filled or unfilled, and includes  
29 submerged lands.

30     (t) “*Transferable development rights*” means transferable  
31 development rights as that term is defined in the city’s planning  
32 code, as may be amended from time to time.

33     SEC. 2. The Legislature finds and declares all of the following:

34     (a) The San Francisco waterfront is a valuable public trust asset  
35 of the state that provides special maritime, navigational,  
36 recreational, cultural, and historical benefits to the people of the  
37 region and the state.

38     (b) The lands comprising the San Francisco waterfront consist  
39 primarily of sovereign tidelands granted to the city by the state  
40 pursuant to the Burton Act. Under the city’s charter, the granted

lands are held and managed by the port. The Burton Act authorizes the port to use, conduct, operate, maintain, manage, regulate, improve, and control the San Francisco waterfront consistent with the public trust and the Burton Act trust.

(c) *A unique attribute of the port is the numerous historic maritime resources present on port property, many of which are in need of major structural repairs and are not currently available for the use and enjoyment of the public.* The Legislature has previously found that rectifying the deteriorating conditions along the San Francisco waterfront, the preservation of the numerous historic piers and other historic structures on port land, and the construction of waterfront plazas and open space, are matters of statewide importance that will further the purposes of the public trust and the Burton Act trust. The Legislature has also found that revitalization of the Pier 70 area and the restoration of its unique collection of historic maritime industrial buildings is of particular importance. As the port strives to make productive use of the Pier 70 area and other lands under its jurisdiction, it faces numerous obstacles related to the high costs of waterfront development, including costs associated with seismic safety improvements, historic rehabilitation, hazardous materials remediation, and providing public access to the waterfront. The success of the port's efforts to revitalize the waterfront depends in part on strategies for increasing revenues from port lands and for reducing the costs of beneficial development projects.

(d) The seawall lots are tidelands that were filled and cut off from the waterfront by the construction of the great seawall (now occupied by the Embarcadero roadway) in the late 19th and early 20th centuries. Over time, certain of the seawall lots or portions thereof, including the designated seawall lots, have ceased to be useful for the promotion of the public trust and the Burton Act trust, except for the production of revenue to support the purposes of the Burton Act trust. The designated seawall lots are presently either vacant or leased on an interim basis, primarily for commuter parking.

(e) The Legislature, in Chapter 660 of the Statutes of 2007, found that most of the designated seawall lots are no longer necessary for the purposes of the public trust or Burton Act trust. The Legislature also found that future revenues from the development and leasing of the designated seawall lots are an

1 essential source of funds to preserve the port's numerous historic  
2 piers and *historic* structures, construct and maintain waterfront  
3 plazas and open space, and improve public access to the waterfront.  
4 Chapter 660 lifted the use restrictions of the public trust and Burton  
5 Act trust from those designated seawall lots and authorized the  
6 port to enter into nontrust leases of the lands, subject to certain  
7 conditions, and subject to the requirement that the lease revenues  
8 be used for specified trust purposes.

9 (f) Seawall lot 322-1 is presently used for surface parking  
10 primarily serving commuters. The lot was not included in Chapter  
11 660, but like the other designated seawall lots, seawall lot 322-1  
12 was filled and reclaimed as part of a highly beneficial plan of  
13 harbor development, has ceased to be tidelands, is cut off from the  
14 water, constitutes a relatively small portion of the tidelands granted  
15 to the city, ~~and is no longer necessary~~ *not currently being used,*  
16 *and is not anticipated in the foreseeable future to be used,* for  
17 public trust or Burton Act trust purposes. It is the intent of the  
18 Legislature that, *conditioned on the approval by the commission,*  
19 seawall lot 322-1 be freed of the use requirements of the public  
20 trust, the Burton Act trust, and the Burton Act transfer agreement  
21 in the same manner and subject to the same requirements as the  
22 designated seawall lots under Chapter 660, subject to the additional  
23 provisions of this act.

24 (g) The lack of affordable housing is a critical problem that  
25 threatens the economic, environmental, and social quality of life  
26 in California, and is a matter of statewide concern. The Legislature  
27 has previously found that attainment of the state's housing goals  
28 requires the cooperative participation of government and the private  
29 sector in an effort to expand housing opportunities and  
30 accommodate the housing needs of Californians of all economic  
31 levels. The Legislature has also found that the provision of housing  
32 affordable to low- and moderate-income households requires the  
33 cooperation of all levels of government, and that local and state  
34 governments have a responsibility to use the powers vested in them  
35 to facilitate the improvement and development of housing to make  
36 adequate ~~provision~~ *provisions* for the housing needs of all  
37 economic segments of the community. The Legislature has also  
38 recognized that local jurisdictions should encourage, to the  
39 maximum extent practicable, infilling existing urban areas.

1 (h) Some of the port's designated seawall lots, including seawall  
2 lot 322-1, are well-suited to support infill affordable housing  
3 development. Development of affordable housing typically requires  
4 a ground lease at rents that are below market. However, Chapter  
5 660 requires the port to receive fair market value for nontrust leases  
6 of designated seawall lots.

7 (i) The city has implemented a number of local programs  
8 designed to encourage the development of affordable housing,  
9 including programs that impose fees, exactions or other obligations  
10 on new development. For example, the city's jobs-housing linkage  
11 program imposes fees on most types of commercial development  
12 to offset the demand for affordable housing generated by new  
13 employment.

14 (j) Private commercial development on port property is subject  
15 to the city's jobs-housing linkage program fees. These fees increase  
16 the already high costs associated with development and  
17 revitalization of port property. The project development costs for  
18 port property would be reduced if the jobs-housing linkage fees  
19 that would otherwise be imposed on development projects on port  
20 property could be reduced or waived in exchange for an equivalent  
21 amount of rent credits or similar incentives provided by the port  
22 to encourage affordable housing development on other port  
23 property.

24 (k) A purpose of this act is to reduce the costs associated with  
25 development that will revitalize the waterfront, *facilitate the*  
26 *preservation of historic piers and structures*, and benefit the public  
27 trust, while also encouraging affordable housing development on  
28 port lands no longer needed for trust purposes, by authorizing the  
29 port, *subject to commission approval*, to grant rent credits or similar  
30 incentives for affordable housing development on seawall lot 322-1  
31 or other port property where housing is permitted, provided the  
32 port can apply those credits to reduce the affordable housing fees  
33 or other obligations imposed on development within the Pier 70  
34 area or on other port lands and subject to the conditions set forth  
35 in this act.

36 (l) Seawall lot 322-1 is located in the city's Northeast Waterfront  
37 Historic District. This act includes conditions to ensure that any  
38 development of seawall lot 322-1 for nontrust use is compatible  
39 with the historic and architectural maritime character of the district.

(m) The preservation of the port's historic ~~finger~~ piers and other historic ~~resources~~ *structures is critical for the preservation of the city's rich maritime history*, furthers trust purposes, and is of statewide benefit. The city has adopted programs to encourage the preservation of historic resources, including a transferable development rights program. This act amends the Burton Act to clarify that the port may ~~sell~~ *transfer* transferable development rights to preserve historic ~~resources~~ *piers and structures* on port property, to the extent authorized under local law and subject to certain limitations.

SEC. 3. (a) Seawall lot 322-1 shall ~~be free from~~ *remain subject to* the use requirements of the public trust, the Burton Act trust, and the Burton Act transfer agreement ~~for~~ *until the commission finds both of the following:*

(1) *Seawall lot 322-1 is no longer necessary for public trust or Burton Act trust purposes.*

(2) *Lifting the use requirement of the public trust, the Burton Act trust, and the Burton Act transfer agreement until January 1, 2094, is in the best interest of the state.*

(b) *Upon the commission making the findings identified in subdivision (a), seawall lot 322-1 shall be free from the use requirements of the public trust, the Burton Act trust, and the Burton Act transfer agreement for the period between the effective date of this act and January 1, 2094, and shall be treated as a designated seawall lot for purposes of the authority granted to the port under Chapter 660. The port may enter into a nontrust lease for all or any portion of seawall lot 322-1, subject to the requirements of Section 4 of Chapter 660 and this act. Section 6 of Chapter 660 shall not apply to seawall lot 322-1.*

~~(b)~~

(c) As a condition for commencing vertical construction on seawall lot 322-1 for a nontrust use pursuant to subdivision ~~(a)~~ *(b)*, the port shall obtain a certificate of appropriateness or a comparable determination of compatibility of the development with the historic character of the surrounding area, as may be provided under the city's planning code. For purposes of effectuating this section, the port is authorized to submit to the procedures set forth in the city's planning code for obtaining a certificate of appropriateness or comparable determination.



SEC. 4. (a) Notwithstanding subdivision (c) of Section 4 of Chapter 660 of the Statutes of 2007, the port may, *conditioned on the approval of the commission*, provide a rent credit or other waiver or deferral of rent in connection with either a nontrust lease of seawall lot 322-1, or, ~~with the approval of the commission~~, a *nontrust* lease of any other designated seawall lot or other port property that is not subject to *the use restrictions of the public trust* ~~or, the Burton Act trust-use restrictions, or the Burton Act transfer agreement~~, that results in an effective rent to the port below fair market value, if the commission finds that both of the following conditions are met:

(1) The nontrust lease is for affordable housing. The lease may allow other uses, including, but not limited to, commercial uses and market rate housing, provided that no portion of the rent credit, waiver, or deferral is applied to the rent for those other uses.

(2) The port is entitled to apply the value of the rent credit, waiver, or deferral as an offset against fees or other exactions or obligations that would otherwise be levied or imposed by the city on development projects located on Pier 70, or on other lands under the port's jurisdiction, if approved by the commission *in accordance with this paragraph*, relating to the projects' impacts on or demand for affordable housing, including, but not limited to, fees imposed pursuant to the city's jobs-housing linkage program. *If the development project benefiting from the offset is not located on Pier 70, the commission shall not make an approval under this paragraph unless the project is located on the designated seawall lot on which the affordable housing is located, or the commission finds that the development project includes investment in the preservation of a historic pier or historic structure in an amount equal to or greater than the amount of the offset.*

(b) The port shall provide the commission with documentation necessary to support the findings required by *Section 3 of this act* and subdivision (a) of this section at *or prior to* the time the port submits the proposed nontrust lease and other documentation required under subdivision (c) of Section 4 of Chapter 660.

(c) Nothing in this section shall be construed as limiting the port's authority to provide rent credits, waivers, or deferrals under a nontrust lease in exchange for other valuable consideration provided by the lessee that meets the fair market value requirement of Chapter 660.

(d) Nothing in this section shall be construed as limiting the port's authority under the Burton Act to use or lease the designated seawall lots for uses permitted by the Burton Act, subject to any applicable limitations of state law.

SEC. 5. Sections 3 and 4 of this act shall be inoperative on January 1, 2094, after which date the use of the designated seawall lots shall be consistent with the public trust, the Burton Act trust, and the Burton Act transfer agreement. No later than January 1, 2094, all structures, buildings, and appurtenances on the designated seawall lots not consistent with the purposes of the public trust, the Burton Act trust, and Burton Act transfer agreement shall be removed or modified, including any necessary restoration or remediation of the seawall lots, to facilitate public trust uses.

SEC. 6. Section 3.3 is added to Chapter 1333 of the Statutes of 1968, to read:

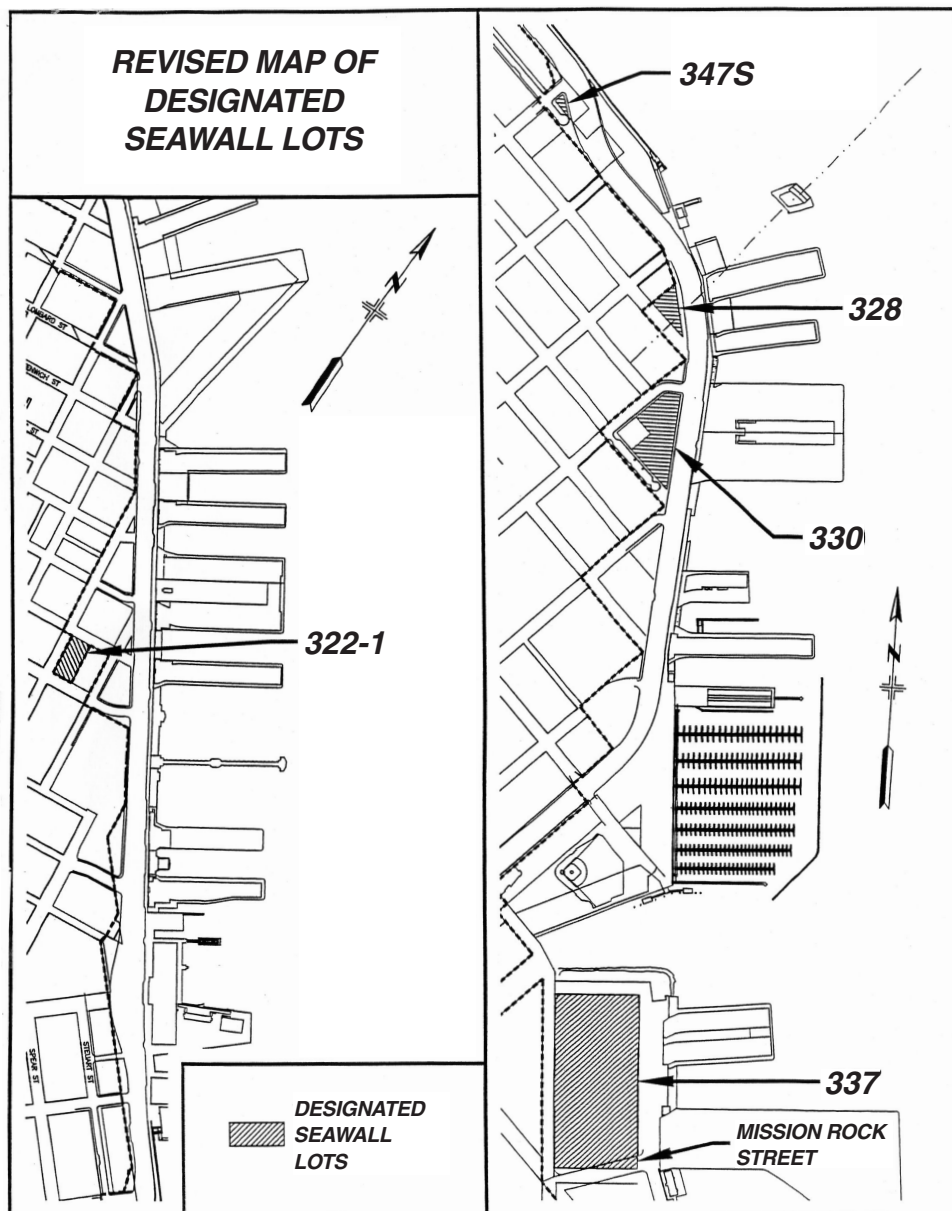
SEC. 3.3. ~~The~~ *For purposes of subdivision (e) of Section 3, the* preservation or restoration of marine resources consistent with the primary mission of the San Francisco Harbor may include the ~~sale~~ *or transfer by the City and County of San Francisco, acting by and through its Port Commission (port), of the port's transferable development rights, as defined in the city's planning code, as may be amended from time to time, in connection with the preservation of a historic pier or historic structure under port jurisdiction. To the extent authorized by the planning code and upon a determination by the port commission that there are no foreseeable public trust needs for the development rights, the port may sell or transfer development rights associated with a historic pier or historic resource structure on port property, provided that if the affected port property is subject to the public trust and the Burton Act trust, the restriction on the port's development rights following transfer shall be for a period not exceeding 66 years. The port shall use the proceeds from a transfer of development rights solely for the furtherance of the purposes specified by this act, which include, without limitation, reimbursement of the costs of rehabilitation of a historic pier or historic resource undertaken by any individual, corporation, limited liability company, partnership, joint venture, business entity, business trust, association, or other private organization or private entity the preservation of a historic pier or historic structure.* For purposes of effectuating this section, the

1 port is authorized to submit to the procedures for transfer of  
2 development rights set forth in the city's planning code.

3 SEC. 7. The Legislature finds and declares that unique  
4 circumstances exist at the San Francisco waterfront as described  
5 in Section 2 of this act, and that therefore this act sets no precedent  
6 for any other location or project in the state.

7 SEC. 8. The following map is a part of this act:

8 ~~PRINTER PLEASE NOTE: TIP-IN MATERIAL TO BE~~  
9 ~~INSERTED~~



1     *SEC. 9. Notwithstanding any other law, for purposes of Chapter*  
2     *660 and the Burton Act, the terms “historic pier,” “historic*  
3     *structure,” and “preservation” shall have the same meaning as*  
4     *those terms are defined in Section 1 of the act adding this section.*

5     ~~SEC. 9.~~

6     *SEC. 10.* The Legislature finds and declares that, because of  
7     the unique circumstances applicable only to the lands described  
8     in this act, a statute of general applicability cannot be enacted  
9     within the meaning of subdivision (b) of Section 16 of Article IV  
10    of the California Constitution. Therefore, this special statute is  
11    necessary.

12    ~~SEC. 10.~~

13    *SEC. 11.* If any provision of this act, or its application to any  
14    person, property, or circumstance, is held invalid by any court, the  
15    invalidity or inapplicability of such provision shall not affect any  
16    other provision of this act or the application of that provision to  
17    any other person, property, or circumstance, and the remaining  
18    portions of this act shall continue in full force and effect, unless  
19    enforcement of this act as so modified by and in response to that  
20    invalidation would be grossly inequitable under all of the  
21    circumstances, or would frustrate the fundamental purposes of this  
22    act.